

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
kajeet Inc.)	
)	
Petition for Designation as a Lifeline Eligible)	
Telecommunications Carrier)	
)	

**PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER TO PARTICIPATE IN THE LIFELINE PROGRAM**

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March 12, 2012

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I. INTRODUCTION & SUMMARY

kajeet Inc. (“kajeet”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), and Section 54.201 of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby requests limited designation as an eligible telecommunications carrier (“ETC”) in the States of Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia (collectively the “FCC States”). kajeet seeks ETC designation in the FCC States only for purposes of participation in the Universal Service Fund’s (“USF”) Lifeline program. In particular, kajeet seeks ETC status to participate in the Low-Income Broadband Pilot Program (“Pilot Program”).¹

¹ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”) at ¶¶ 323 *et seq.*

The regulatory authorities in the FCC States lack jurisdiction to consider kajeet's request for designation as an ETC, but the Commission, under Section 214(e)(6) of the Act, has the necessary jurisdictional authority to consider and grant this request.² As more fully described below, kajeet satisfies the requirements for designation as an ETC in the FCC States and will offer all of the services and functionalities supported by the universal service program throughout its designated service areas in the FCC States. Grant of kajeet's request, therefore, will promote the public interest by providing customers in the FCC States with lower prices and higher quality wireless services through innovative distribution channels.

II. BACKGROUND

A. kajeet Overview

kajeet provides prepaid wireless telecommunications services to consumers by using the Sprint Nextel ("Sprint") network on a wholesale basis to offer nationwide service. Sprint is a nationwide carrier that provides wholesale capacity on its wireless network to wireless resellers like kajeet. Pursuant to an existing agreement, kajeet obtains network infrastructure and wireless transmission facilities from Sprint to allow kajeet to operate as a Mobile Virtual Network Operator ("MVNO"), similar to TracFone, Virgin Mobile, and other MVNOs that have been granted Lifeline ETC status by the Commission.³ As an MVNO, kajeet purchases wireless services from

² See 47 U.S.C. § 214(e)(6).

³ See, e.g., *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, North Carolina, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and Washington D.C.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) ("*TracFone ETC Order*"); *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) ("*Virgin Mobile Order*"). The Commission had previously granted TracFone forbearance from the facilities requirement for ETC designation, permitting TracFone to offer the supported services via resale only. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. §* (continued on next page)

Sprint on a wholesale basis for calling and text messaging, packages those services into kajeet's own service plans and pricing, and bundles the wireless service with kajeet's handset selection, mobile applications, marketing materials, web interface, and customer service to produce finished wireless service offerings to sell to end-user customers.

kajeet's initial Lifeline voice offering will involve applying a \$10 discount (amounting to the \$9.25 Lifeline discount plus an additional \$0.75 reduction provided by kajeet) to kajeet's \$14.99 service plan.⁴ That service plan includes 60 minutes of nationwide voice service and unlimited texting. Additional minutes are charged at \$0.10 each. kajeet may determine in the future to offer additional Lifeline voice plans. In addition, kajeet is in the process of formulating a Lifeline broadband offering that it will submit in the window for Pilot Program proposals.

kajeet is a small, job-creating entrepreneurial company; thus, grant of kajeet's application will promote entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, consistent with section 257 of the Communications Act.⁵ kajeet anticipates that its proposal also will include partnerships with third parties that have already developed approaches for overcoming broadband adoption barriers including digital literacy, equipment costs, and relevance.⁶

kajeet has extensive experience in providing MVNO service to populations with specific needs. kajeet began as service provider with offerings specifically tailored to tweens and their

54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("*TracFone Forbearance Order*"). The *Virgin Mobile Order* contained both the forbearance analysis and ETC designation.

⁴ Information about kajeet's service plans is available at <http://www.kajeet.com/kajeetStore/serviceplans.do>.

⁵ See *Lifeline Reform Order* at ¶ 326.

⁶ *Id.*

parents, including age-specific features to control access and usage based on a variety of parameters including time and called party. kajeet also has extensive experience in the educational communications and technology arena. For example, kajeet serves Supplemental Service Providers (SES) that use telecommunication services in the provision of tutoring for students. One such customer is Tutors With Computers. kajeet's patented mobile policy controls and its Mobile Web filtering capabilities allow its SES customers to manage whom students can call on the device they use to communicate with their tutors, and what Mobile Web sites they can and cannot visit on their devices. In addition, the Kajeet platform allows the SES provider to reward students who meet pre-established educational goals and objectives to be rewarded with additional telecommunications services for personal enjoyment (e.g., a week of free texting). Our SES customers have found such rewards and incentives to be highly motivational for students in SES tutoring programs. Kajeet believes that it and its SES partners are only just beginning to realize the benefits of mobile policy controls and mobile service incentives in the provision of tutoring supported by telecommunications services. In addition, we plan to extend the range of devices used to support such tutoring programs from feature phones to highly capable smart phones and tablets, where kajeet's patented mobile policy controls, Web filtering and incentive/reward capabilities are more fully deployed. Finally, kajeet's patented mobile wallet technology – with which different parties pay for different uses of the mobile device – offers another area in which kajeet and its SES partners can create new value, by enabling tutoring programs to leverage the payment capabilities of additional parties to pay for additional and/or augmented services in support of the tutoring programs.

Using its new Sentinel™ product, kajeet has integrated and deployed a number of powerful management capabilities for mobile devices that support the educational programs of a number of schools (e.g., Harvard University) and teacher training organizations (e.g., NCTAF):

1. Customizable Mobile Web filtering – by device, and/or defined set of devices, and/or universally across all devices
2. Patented mobile policy controls (who can do what, when, where, with whom, and under what conditions)
3. Real-time, dynamic distribution of pre-purchased data services to individual devices or sets of devices
4. Patented multiple mobile walleting that supports multiple payers for different services (e.g., school pays for academic uses of the device, parents pay for non-academic uses of the same device)

In the near future , kajeet expects to expand the features of Sentinel™ to include the provision of automated rewards and incentives – such as it currently uses with SES customers – and GPS device-location capabilities. In addition, the range of devices extends from smart phones, to mi-fi devices, tablets, netbooks, notebooks and laptops.

B. Lifeline and the Pilot Program

Section 254 of the Act embodies the Commission’s historical commitment to the concept of universal service, particularly for low-income consumers. Section 254(b) sets forth the principles upon which the Commission shall base its policies for the promotion and advancement of universal service, requiring the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications services at affordable and reasonably comparable

rates.⁷ Lifeline support helps defray the monthly costs of telecommunications services for lower-income consumers by providing them with discounts off the monthly cost of telephone service, with additional discounts available for individuals living on Tribal lands.

The Commission recently reformed its Lifeline rules (i) to minimize opportunities for waste, fraud, and abuse, and (ii) to modernize the program for the broadband age.⁸ Among other things, the Commission specifically permitted ETCs to apply Lifeline discounts to service bundles including both telephone and broadband services,⁹ and created the Pilot Program.¹⁰ The Pilot Program “recogniz[es] the complexities of modernizing the low-income support mechanisms for broadband,” and therefore focuses on testing various variables to determine how to design a successful long-term Lifeline broadband program.¹¹ The Commission concluded that “only ETCs will be eligible to receive Pilot Program funds,” and urged carriers wishing to participate in the Pilot Program to “act promptly to begin the [ETC designation] process.”¹² The Commission also committed to “make every effort to process such ETC applications in a timely fashion.”¹³

⁷ See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas...have access to telecommunications [services] ...” 47 U.S.C. § 254(b)(3) (emphasis added).

⁸ See generally *Lifeline Reform Order*.

⁹ *Id.* at ¶¶ 310-20.

¹⁰ *Id.* at ¶¶ 321 *et seq.*

¹¹ *Id.* at ¶¶ 322-23.

¹² *Id.* at ¶ 334.

¹³ *Id.*

III. THE COMMISSION HAS AUTHORITY TO PERFORM THE ETC DESIGNATION

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support.”¹⁴ The Act grants the authority to designate entities as ETCs to state public utility commissions (“PUCs”). Pursuant to Section 214(e)(6), however, the Commission may designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission.”¹⁵ The Commission has established that a carrier must demonstrate that it “is not subject to the jurisdiction of a state commission” before it may consider an application for ETC designation.¹⁶ The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an “affirmative statement” from the state PUC that it lacks jurisdiction to perform the ETC designation.”¹⁷

The state commission in each of the FCC States has provided an affirmative statement that it will not perform ETC designations for wireless carriers such as kajeet, and these affirmative statements are provided at Appendix A. Accordingly, for each of the FCC States, kajeet requests that the Commission exercise its authority under Section 214(e)(6) and determine that kajeet is “a

¹⁴ 47 U.S.C. § 254(e).

¹⁵ See 47 U.S.C. § 214(e)(6).

¹⁶ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

¹⁷ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 ¶ 113 (2000).

common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹⁸

IV. KAJEET REQUESTS ETC DESIGNATION IN ITS SERVICE AREAS IN THE FCC STATES FOR PARTICIPATION IN THE LIFELINE PROGRAM

A. kajeet Requests ETC Designation in Its Wireless Service Area

kajeet requests ETC designation for its entire service area in the FCC States, but excluding any Tribal Areas. Because kajeet is a reseller of Sprint’s service, kajeet’s service area is coterminous with Sprint’s service area in the FCC States. Thus, kajeet requests as its service area the area covered by Sprint’s wireless service in the FCC States.

B. kajeet’s ETC Designation Petition Seeks Authority to Participate in the Lifeline Program Only

kajeet requests ETC designation in the FCC States for the purpose of participating in the Lifeline program and, in particular, to apply for the Pilot Program. kajeet does not seek eligibility to receive support from the High Cost program. As demonstrated herein, the instant request to participate in the Lifeline program is consistent with the Commission’s requirements for ETC designation, and would promote the goals of universal service by permitting kajeet to offer its particular Pilot Program proposal to improve the Commission’s understanding of how to offer Lifeline support for broadband.

V. KAJEET SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act and Section 54.201(d) of the Commission’s rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own

¹⁸ 47 U.S.C. § 214(e)(6).

facilities and the resale of another carrier's services. Applicants must commit to advertise the availability and rates of such services.¹⁹ The Commission also has imposed additional requirements for carriers seeking ETC status.²⁰ As detailed below, kajeet satisfies each of these requirements.

A. kajeet is a Common Carrier

CMRS resellers like kajeet are treated as common carriers for purposes of their provision of CMRS service.²¹

B. kajeet Will Provide the Supported Services Through Resale Pursuant to Blanket Forbearance

As described above, kajeet purchases wireless network services on a wholesale basis from Sprint. kajeet proposes to avail itself of the blanket forbearance that the Commission has granted to all telecommunications carriers seeking Lifeline ETC status, and agrees to comply with the conditions associated with the blanket forbearance grant.²² kajeet's compliance with the conditions for blanket forbearance are described specifically in its Compliance Plan, filed concurrently herewith.

¹⁹ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

²⁰ 47 C.F.R. § 54.202 (2012). Although the rule changes adopted in the *Lifeline Reform Order* are not yet in effect, kajeet demonstrates its compliance with the new requirements.

²¹ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) ("mobile services" providers are common carriers); see also *PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, ... all mobile telephone services *and resellers of such services*.")) (emphasis added).

²² *Lifeline Forbearance Order* at ¶¶ 368-81.

C. kajeet Offers the Supported Service

Through its wholesale arrangements with Sprint, kajeet is able to provide all of the services and functionalities supported by the universal service program under Section 54.101 of the Commission's rules.

Specifically, kajeet will provide its Lifeline customers with voice telephony services, which will include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users (specifically, 60 anytime minutes, plus unlimited texting); and access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in kajeet's service area has implemented 911 or enhanced 911 systems. kajeet does not anticipate offering service that charges separate fees for toll or long distance calls but, to the extent kajeet does so, it commits to offer toll limitation for qualifying low-income consumers.²³

D. Advertising of Supported Services

kajeet will broadly advertise the availability and rates for the services described above using media of general distribution as required by Section 54.201(d)(2) of the Commission's regulations.²⁴ The company will advertise the availability of its services through such media as newspapers, magazines, radio, the Internet or billboards. These advertising campaigns will be specifically targeted to reach low-income customers and promote the availability of cost-effective wireless services to this neglected consumer segment.

²³ 47 C.F.R. § 54.401(a) (2012).

²⁴ See 47 C.F.R. § 54.201.

kajeet will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout the FCC States. kajeet intends to distribute brochures and posters at various state and local social service agencies to inform customers of the availability of its Lifeline services.

In marketing its Lifeline service offerings, kajeet commits to explain in clear, easily understood language in all marketing materials for its Lifeline offerings that the offerings are Lifeline-supported services; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment; that the program is limited to one benefit per household, consisting of either wireline or wireless service; that Lifeline is a government benefit program, and that consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program. For purposes of this commitment, “marketing materials” includes materials in all media, including but not limited to print, audio, video, Internet, and outdoor signage.²⁵

E. kajeet Will Comply With the Additional Requirements for Commission Designation of Lifeline ETCs

Kajeet commits to complying with the additional requirements for Commission designation of Lifeline ETCs.²⁶ Specifically:

(1) kajeet certifies that it will comply with the service requirements applicable to the support that it receives.

(2) kajeet has the ability to remain functional in emergency situations, including a reasonable amount of back-up power to ensure functionality without an external power source,

²⁵ *Lifeline Reform Order* at ¶ 275.

²⁶ 47 C.F.R. § 54.202.

the ability to reroute traffic around damaged facilities, and the capability to manage traffic spikes resulting from emergency situations. As a CMRS reseller, kajeet relies upon its underlying carrier, Sprint, for the operation of its network. kajeet's contract with Sprint obligates Sprint to ensure that Sprint takes reasonable measures to remain functional in emergency situations.

(3) kajeet agrees to satisfy applicable consumer protection and service quality standards by complying with CTIA's Consumer Code for Wireless Service.

(4) kajeet is financially and technically capable of providing Lifeline service in compliance with the FCC's rules. kajeet has offered non-Lifeline service to subscribers since 2007. In addition to its focused non-Lifeline MVNO offering, kajeet offers various wholesale carrier and non-carrier services to other communications providers. kajeet receives substantial revenues from these other sources, and does not intend to rely exclusively on USF disbursements to operate. kajeet has not been the subject of any proceedings to revoke ETC status. On December 5, 2011, the Commission released a Notice of Apparent Liability and Order finding that kajeet and its wholly owned subsidiary, kajeet/Airlink LLC, apparently had failed to make required contributions to support USF, Telecommunications Relay Service ("TRS"), and local number portability ("LNP"), and had transferred an international section 214 authorization without proper authorization.²⁷ kajeet has been working cooperatively with the Enforcement Bureau to reach an expeditious resolution to the matter. During a temporary financial crisis, kajeet was unable to make its required contributions. These financial problems resulted from wrongdoing by one of kajeet's banks, which led to a settlement between the bankers and the Securities and Exchange Commission, and *not* from any wrongdoing or mismanagement by

²⁷ *Kajeet Inc. and kajeet/Airlink LLC Apparent Liability for Forfeiture*, File No. EB-09-IH-1972, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684 (2011).

kajeet or its management.²⁸ kajeet has made all of its back payments, including penalties and interest, and currently has a credit balance with USAC. The Company is now in “green light” status with the FCC. These past financial difficulties resulted from no fault of kajeet or its management, and kajeet does not believe that they should have an impact on this petition.

(5) As noted above, kajeet will submit detailed information describing the terms and conditions of any voice telephony service plans it will offer to Lifeline subscribers in its Pilot Program proposal, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.

kajeet commits not to charge Lifeline customers a monthly number portability charge.²⁹

Consistent with the *Lifeline Reform Order*, kajeet provides the following information regarding its holding company, operating companies and affiliates, and any branding (a “dba,” or “doing-business-as company” or brand designation) with any such entities’ Study Area Codes (“SACs”).³⁰ kajeet, Inc., the applicant here, has one wholly owned subsidiary, kajeet/Airlink LLC. Neither kajeet Inc. nor kajeet/Airlink LLC is currently an ETC. Thus, neither entity has a SAC. kajeet/Airlink LLC does not have any pending applications for ETC status.

F. kajeet Will Guard Against Waste, Fraud, and Abuse of Lifeline Funds

If designated as an ETC, kajeet will participate fully in all federal and state efforts to eliminate waste, fraud, and abuse of Lifeline program funds, including without limitation efforts to ensure that ineligible consumers do not receive Lifeline benefits and eligible consumers do not

²⁸ See “UBS Securities LLC and UBS Financial Services, Inc. Agree in Principle to Auction Rate Securities Settlement; Firm Will Provide Liquidity and Remediate Losses,” Press Release, Securities and Exchange Commission (Aug. 8, 2008), available at <http://www.sec.gov/news/press/2008/2008-171.htm>.

²⁹ 47 C.F.R. § 54.401(e) (2012).

³⁰ *Lifeline Reform Order* at ¶ 296.

receive duplicate benefits. Specifically, kajeet will comply with all requirements for verifying that its Lifeline subscribers are eligible for Lifeline benefits, and that no one else in the subscriber's household is receiving Lifeline benefits, including checking documentation where necessary or querying applicable databases where available. kajeet also will query applicable databases, and check its own records, to avoid duplicate Lifeline subscriptions for the same consumer or the same household.

A sample of the draft customer certification form that kajeet will use for Lifeline subscribers is attached as Exhibit B. This form also includes information regarding the internal procedures that kajeet will employ to ensure compliance with the rules. kajeet will require all customers to complete this form before obtaining Lifeline benefits, and annually thereafter.

In addition, kajeet commits to explain in clear, easily understood language in all marketing materials for its Lifeline offerings that the offerings are Lifeline-supported services; that only eligible consumers may enroll in the program; what documentation is necessary for enrollment; that the program is limited to one benefit per household, consisting of either wireline or wireless service; that Lifeline is a government benefit program, and that consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program. For purposes of this commitment, "marketing materials" includes materials in all media, including but not limited to print, audio, video, Internet, and outdoor signage.³¹

kajeet also commits to ensuring that it does not claim Lifeline credit for customers that do not make use of kajeet's Lifeline service. In this regard, kajeet does not currently plan to offer

³¹ *Lifeline Reform Order* at ¶ 275.

“free” service, which should minimize the possibility of customers not making use of the service. Specifically, consistent with the Commission’s new rules, kajeet will not treat any consumer as enrolled in its Lifeline service, and will not claim Lifeline credit for any subscriber, until the subscriber personally activates the service. Furthermore, kajeet will not claim Lifeline support for inactive subscribers who have not used the service for a consecutive 60-day period. kajeet will notify its subscribers at service initiation about the non-transferability of the service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time.

VI. DESIGNATING KAJEET AS AN ETC WILL PROMOTE THE PUBLIC INTEREST

Designating kajeet as an ETC will promote the public interest in a number of ways. First, as a general matter, there is no question that limited designation of kajeet as an ETC in the FCC States will promote the public interest by providing low-income consumers in the FCC States with more affordable and higher quality wireless services. Many lower-income consumers have yet to reap the full benefits of the wireless marketplace. Whether because of financial constraints, poor credit or intermittent employment, these consumers often lack access to the benefits that wireless services bring to other consumers.³² Designating kajeet as an ETC in the FCC States will enable it to expand the availability of affordable telecommunications services to qualifying consumers, leading to lower prices and increased choice.³³

³² See *supra* note 20.

³³ See *TracFone ETC Order*, 23 FCC Rcd at 6212 ¶ 15; *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38; *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20760 ¶ 52 (1996).

Designating kajeet as a Lifeline ETC also will serve the public interest by permitting kajeet's participation in the Pilot Program. As noted above, the Commission recently reformed its Lifeline rules to minimize opportunities for waste, fraud, and abuse, and also took action to modernize the program for the broadband age, including creation of the Pilot Program.³⁴ The Pilot Program "recogniz[es] the complexities of modernizing the low-income support mechanisms for broadband," and therefore focuses on testing various variables to determine how to design a successful long-term Lifeline broadband program.³⁵

As a wireless reseller and long-time provider of educational broadband and digital literacy services, kajeet is particularly well-positioned to formulate a unique Pilot Program proposal that will provide valuable insight into how to use the Lifeline program to support broadband services for low-income consumers. As discussed above, kajeet has a unique history of using mobile and broadband technology in cooperation with educational providers and digital literacy programs to improve the efficacy of the mobile and broadband experience.³⁶

Because the Commission has concluded that "only ETCs will be eligible to receive Pilot Program funds," kajeet will be barred from participation unless the Commission grants kajeet ETC status in time for the submission of Pilot Program proposals. In adopting the Pilot Program, the Commission urged carriers wishing to participate to "act promptly to begin the [ETC designation] process."³⁷ The Commission also committed to "make every effort to process such ETC

³⁴ *Lifeline Reform Order* at ¶¶ 321 *et seq.*

³⁵ *Id.* at ¶¶ 322-23.

³⁶ *See supra* Section I.A.

³⁷ *Lifeline Reform Order* at ¶ 334.

applications in a timely fashion.”³⁸ The Commission should promptly grant kajeet’s ETC petition in order to allow kajeet to proffer its unique and valuable Pilot Program proposal.

VII. ANTI-DRUG ABUSE CERTIFICATION

kajeet certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

VIII. CONCLUSION

As discussed above, designation of kajeet as an ETC in the FCC States accords with the requirements of Section 214(e)(6) of the Act and is in the public interest.

For all of the foregoing reasons, kajeet respectfully requests that the Commission designate kajeet as an ETC in the FCC States.

Respectfully submitted,

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By: 

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March 12, 2012

³⁸ *Id.*

Exhibit A

Evidence that state commissions lack jurisdiction to designate kajeet as an ETC

Exhibit A



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

**PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,**

Joint Petitioners

**PETITION: For ETC status and/or
clarification regarding the jurisdiction
of the Commission to grant ETC status
to wireless carriers.**

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

DOCKET U-4400 - #2

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, in any respect, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

DOCKET U-4400 - #3

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

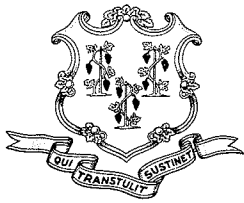

Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

August 7, 2009

In reply, please refer to:

Docket No. 09-07-24:UR:PAP

L. Charles Keller, Esquire
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Docket No. 09-07-24 - Conexions LLC Seeks Designation as a Competitive Eligible Telecommunications Carrier

Dear Mr. Keller:

The Department of Public Utility Control (Department) acknowledges receipt of your July 10, 2009 letter filed on behalf of Conexions LLC (Conexions) seeking clarification as to whether the Department asserts jurisdiction to designate competitive eligible telecommunications carriers (CETC) in Connecticut. According to your letter, Conexions seeks designation as a CETC in Connecticut and believes that the Department does not assert jurisdiction to designate CETCs in the state and that carriers must apply to the FCC for certification.

The Department has reviewed your request and notes that it has approved requests for CETC status from wireline-based carriers. However, in the instant case, Conexions is a mobile virtual network operator. The Department does not regulate or license mobile carrier services' rates and charges and therefore, it is not subject to the Department's jurisdiction for the purposes of designating CETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietro
Executive Secretary



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247
FAX: (302) 739 - 4849

July 15, 2009

L. Charles Keller, Jr.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Ste. 700
Washington, DC 20037

RE: *Conexions LLC*

Dear Mr. Keller:

You have requested a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate your client, Conexions, LLC ("Conexions"), as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You have represented that Conexions is a new mobile virtual network operator who seeks to participate in the FCC's Lifeline support program for qualifying low-income consumers.

Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers. *See* 26 *Del. C.* § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 *Del. C.* § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service"). In fact, in granting ETC status in Delaware for Cellco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *See Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd. 39 (2000), at ¶¶ 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Cellco* decision.

L. Charles Keller, Jr.
July 15, 2009
Page 2

I hope this addresses your request for confirmation that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as Conexions LLC, as an ETC.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce H. Burcat". The signature is fluid and cursive, with the first name "Bruce" and last name "Burcat" being clearly legible.

Bruce H. Burcat
Executive Director



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsc.org

July 22, 2009

Via First Class and Certified Mail


Mr. L. Charles Keller
Counsel for Conexions, LLC.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037

Dear Mr. Keller:

Thank you for your July 10, 2009 letter stating Conexions, LLC's ("Conexions") intent to be designated as an eligible telecommunications carrier in the District of Columbia. As you are aware, the Public Service Commission of the District of Columbia ("Commission") does not have jurisdiction over wireless carriers operating in the District of Columbia, pursuant to section 34-2006(b) of the District of Columbia Code. Thus, the Commission has no authority to designate Conexions as an eligible telecommunications carrier in the District of Columbia.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact me at 202-626-5140 or rbeverly@psc.dc.gov.

Sincerely,

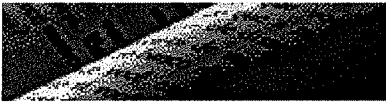

Richard A. Beverly
General Counsel

Enclosure



D.C. Council Home

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Welcome to the online source for the District of Columbia Official Code

DC ST § 34-2006
Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness
Division V. Local Business Affairs

Title 34. Public Utilities. (Refs & Annos)

Subtitle V. Telecommunications.

Chapter 20. Telecommunications Competition. (Refs & Annos)

➔ § 34-2006. Exemptions.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

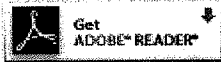
The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104- 104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through June 17, 2009

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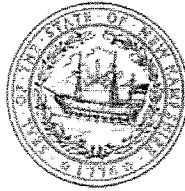
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Concord, N.H. 03301-2429

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1-800-735-2964

Website:
www.puc.nh.gov

September 22, 2009

L. Charles Keller
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Conexions, LLC


Dear Mr. Keller:

This is in response to your letter to the Commission, received July 10, 2009, concerning the above-referenced telecommunications carrier. You requested a statement from the Commission that Conexions, LLC (Conexions) is not subject to the jurisdiction of the Commission, inasmuch as this will affect how Conexions proceeds with efforts to become designated as an Eligible Telecommunications Carrier (ETC) for purposes of receiving universal service support pursuant to the federal Telecommunications Act.

You attention is directed to a published order of the Commission, *RCC Minnesota, Inc.*, 88 NH PUC 611 (2003) (Order No. 24,245). In that order, the Commission acknowledged that it lacks state-law authority to regulate wireless carriers, *id.* at 615, citing Section 362:6 of the New Hampshire Revised Statutes Annotated, and therefore the Commission concluded that the agency is likewise devoid of jurisdiction to consider a request for ETC designation from the carrier. In my judgment, Conexions as a user of both cellular and PCS (personal communications service) spectrum to provide commercial mobile radio service, may rely on the *RCC Minnesota* decision for the proposition that the Federal Communications Commission, as opposed to the New Hampshire Public Utilities Commission, is the appropriate agency to consider Conexions's bid for ETC status.

Please feel free to call me at 603-271-6005 if I can be of further assistance.

Sincerely,


F. Anne Ross
General Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

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General Counsel

JACLYN A. BRILLING

Secretary

September 1, 2009

L. Charles Keller
Wilkson Barker Knauer, LLP
2300 N Street, NW Suite 700
Washington, DC 20037

RE: Matter 09-01517/Case 09-C-0600 - Conexions LLC Request for Letter Clarifying
Jurisdiction over Wireless CETC

Dear Mr. Keller:

I am responding to your letter to Secretary Brilling, dated July 10, 2009 on behalf of Conexions LLC (Conexions). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designation under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 et seq. You indicated that Conexions is a mobile virtual network operator ("MVNO") seeking designation as a competitive eligible telecommunications carrier ("CETC") in New York.

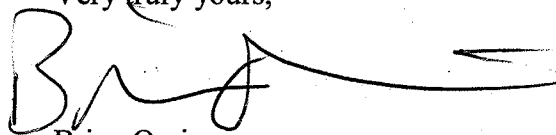
In response to your request, please be advised that the New York State Public Service Law §5 provides that:

Applications of the provisions of this chapter [the Public Service Law] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York State Public Service] commission...makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by Conexions that it is a mobile virtual network operator ("MVNO") provider, Conexions would not be subject to the application of the Public Service Law and therefore, the jurisdiction of the New York Public Service Commission for purposes of making the Eligible Telecommunications Carrier designation.

As this letter is responsive to your request for a statement, Matter 09-01517/Case 09-C-0600 will be closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Brian Ossias', with a long horizontal flourish extending to the right.

Brian Ossias
Assistant Counsel

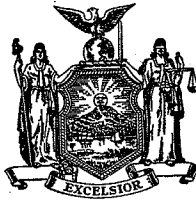
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THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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Commissioners



PETER MCGOWAN
General Counsel

JACLYN A. BRILLING
Secretary

August 13, 2009

L. Charles Keller
Wilkinson Barker Knauer LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Case 09-C-0600 – Petition of Conexions LLC for a Declaratory Ruling
that the Company, a wireless telephone service provider, is not subject
to Commission jurisdiction

Dear Mr. Keller:

I am responding to your letter to Secretary Brilling, dated July 10, 2009, on behalf of Conexions LLC ("Conexions"). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over wireless telephone service providers for purposes of making determinations concerning eligibility for Competitive Eligible Telecommunications Carrier designations under 47 USC §214(e) and 47 CFR §54.201 et seq. You indicated that Conexions is a mobile virtual network operator in several states, including New York.

In response to your request, please be advised that the New York State Public Service Law §5(3) provides that:

Application of the provisions of this chapter [the Public Service Law] to one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York Public Service] commission, . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

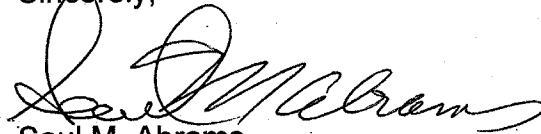
In addition, the New York State Public Service Law §5(6)(a) provides that:

Application of the provisions of this chapter [the Public Service Law] to cellular telephone services is suspended unless the [New York Public Service] commission, . . . makes a determination, after notice and hearing, that suspension of the application of the provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by Conexions that it is a wireless telephone service provider, Conexions would not be subject to the application of the Public Service Law and therefore, the jurisdiction of the New York Public Service Commission for the purposes of making the Competitive Eligible Telecommunication Carrier designation.

As this letter is responsive to your request for a statement, Case 09-C-0600 will be closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Saul M. Abrams", written over a horizontal line.

Saul M. Abrams
Assistant Counsel

cc: Jaclyn A. Brilling, Secretary
Maureen Harris, Commissioner

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23)). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 82-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

pt002003.01

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

)
)
)
)
)

DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴


The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION DOCUMENT CONTROL
AT RICHMOND, APRIL 9, 2004

IN RE:

2004 APR -9 A 11:46

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC-2001-00263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.¹ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

¹ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").²

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.³

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.⁴ The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."⁵

² CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

³ See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.vtstate.va.us/scc/caseinfo.htm>.

⁴ The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

⁵ The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to *comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW*. We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.⁶ However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

⁶ See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.

(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.

Exhibit B
Draft kajeet Lifeline Customer Certification Forms

LIFELINE SUBSCRIBER FORM

This form may be provided in paper or via kajeet's website.

This form must be completed by all Lifeline customers upon enrollment, and annually thereafter.

Name:

Date of Birth:

Last 4 Digits of Social Security Number:

(kajeet is required to collect this information by the FCC's Rules. If you do not provide this information, kajeet is not allowed to give you Lifeline-supported service.)

Residence address:

(Residence address may *not* be a P.O. Box)

Is this a temporary address? If you do not have a permanent residential address (that is, if your address is not recognized by the Post Office, or if you are in a temporary living situation) you must provide a temporary residential service address or other address where you currently are staying. If this is a temporary address, kajeet is required to contact you every 90 days to confirm your address.

If you do not respond to kajeet's address verification attempts within 30 days, you may be de-enrolled from Lifeline service.

In any event, if you move, you must provide your new address to kajeet within 30 days of moving.

Billing address (if different):

(Billing address may be a P.O. Box)

Important Information About the Lifeline Program (Read Carefully)

You are signing up for wireless service that is supported by Lifeline. Lifeline is a federal benefit. Lifeline service is available for only one line per household. A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses. Households are not permitted to receive Lifeline benefits from multiple providers. Violation of the one-per-household requirement would constitute a violation of the FCC's rules and would result in the consumer's de-enrollment from Lifeline and, potentially, prosecution by the United States government.

Attestation Under Penalty of Perjury

I attest under penalty of perjury that:

- EITHER (indicate which):
 - I currently participate in at least one of these programs: Medicaid, Supplemental Nutrition Assistance Program (SNAP); Supplemental Security Income (SSI); Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance

Program (LIHEAP); National School Lunch Program's Free Lunch program; or Temporary Assistance for Needy Families (TANF); and I have provided kajeet with documentation of my current participation. (INITIALS: _____)

• OR

- My household income is at or below 135% of the federal poverty guidelines. There are ____ individuals living in my household. (INITIALS: _____)

[A chart based on household size will be provided, and updated regularly.]

- I acknowledge that I may be required to re-certify to my continued eligibility for Lifeline at any time, and will be required to re-certify my eligibility annually, and that failure to do so will result in the termination of my Lifeline benefits.
- I will inform kajeet within 30 days if I cease to participate in the assistance program identified above, or (if I qualified based on income) if my income increases above 135% of the federal poverty guidelines for a household of my size. I acknowledge that I may be subject to penalties if I fail to do so.
- I acknowledge and consent that my name, telephone number, and address will be given to the Universal Service Administrative Company (USAC) (the administrator of the Lifeline program) and/or its agents in order to verify that I do not receive more than one Lifeline benefit.
- My household is receiving no more than one Lifeline-supported service, and, to the best of my knowledge, no one in my household is receiving a Lifeline-supported service from any other provider.
- I acknowledge that I will not be treated as enrolled in the Lifeline service until I personally use the service, and that I will be de-enrolled from Lifeline service if I do not use my kajeet phone for 60 consecutive days.
- The information contained in this application is true and correct to the best of my knowledge. I acknowledge that providing false or fraudulent information to receive Lifeline benefits is punishable by law. I acknowledge that Lifeline is a government benefit program and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program.

I attest to the above under penalty of perjury.

Signature (may be electronic):

Where a database containing consumer eligibility data is available, kajeet (or state Lifeline administrator, where applicable) will query the database and maintain a record of what specific data was used to certify or re-certify the consumer's eligibility and the date that the consumer was certified or re-certified. Where no database is available, kajeet will check documentation of eligibility, such as a card or letter verifying participation in one of the qualifying programs, or documentation of income such as tax forms or pay stubs.

kajeet will check all applications for Lifeline support and annual re-certifications in the duplicates database, where available, to determine whether an individual at the

applicant's residential address is currently receiving Lifeline-supported service. kajeet also will search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at that residential address.

If nobody at the residential address is currently receiving Lifeline-supported service, kajeet will initiate new Lifeline service, or continue existing service (for annual re-certifications) after determining that the household is otherwise eligible to receive Lifeline and obtaining all required certifications from the household.

If kajeet determines that an individual at the applicant's residential address is currently receiving Lifeline-supported service, kajeet will collect from the applicant upon initial enrollment and annually thereafter the following worksheet:

Multiple Dwelling Unit Worksheet

Under the FCC's rules, each "household" is eligible to receive only *one* Lifeline service. A "household" is any individual or group of individuals who are living together at the same address as one "economic unit." An "economic unit" is a group of individuals contributing to and sharing in the income and expenses of a household. Children under the age of 18 living with their parents are considered to be part of the same household as their parents. Also, if an adult has no or minimal income, and lives with someone who provides financial support, both people are considered to be part of the same household.

Do you live at an address occupied by multiple households: _____

If so, do you certify that you share an address with other adults who do not contribute income to your household and/or share in your household's expenses?